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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/128,289	08/03/1998	WILLIAM O. BURKE III	2041	2475

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/12/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/128,289

Applicant(s)

BURKE ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Amendment C, submitted as Paper No. 22 on December 2, 2002, has been entered. Claim 8 has been cancelled and claims 18 and 23 have been amended as requested. The pending claims are claims 18-25.
2. The cancellation of claim 8 renders moot the objection to said claim as set forth in section 4 of the last Office Action. Amendment C is sufficient to withdraw the 112, 2nd rejection set forth in section 6 of the last Office Action.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 18, 20, and 22-24 stand rejected under 35 USC 103(a) as being unpatentable over EP 702 929 issued to Kerr in view of US 4,820,566 issued to Heine et al., and in further view of US 5,305,565 issued to Nagahama et al. for the reasons of record.
5. Claim 19 stands rejected under 35 USC 103(a) as being unpatentable over the cited EP Kerr, Heine, and Nagahama references, as applied to claim 18 above, and in further view of WO 96/38298 issued to Burke et al. for the reasons of record.
6. Claims 21 and 25 stand rejected under 35 USC 103(a) as being unpatentable over the cited EP Kerr, Heine, and Nagahama references, as applied to claims 18 and 23 above, and in further view of US 4,722,954 issued to Hallworth for the reasons of record.

Response to Arguments

7. Applicant's arguments filed with Amendment C have been fully considered but they are not persuasive.

8. Specifically, Applicant traverses the above 103 rejections by asserting that none of the references explicitly teach a nonwoven substrate is better than a woven or knit substrate (Amendment C, paragraph spanning pages 3-4). In response, it is argued that said references need not have such an explicit teaching. One skilled in the art is able to readily choose out of the three substrates based upon their suitability for the intended art. Additionally, it is well known in the art that nonwovens are typically less expensive than woven or knit fabrics to manufacture. Thus, one might be motivated to choose a nonwoven substrate in order to reduce production costs.

9. Applicant also argues the references do not discuss the importance of (a) matching shrinkage rates of the rubber backing and the nonwoven substrate or (b) combining a high modulus rubber backing with a low shrinkage nonwoven substrate (Amendment C, page 4, lines 2-7). In response, it is reiterated that Nagahama clearly discusses the problem of differential shrinkage between a fibrous carrier substrate and a rubber backing (col. 1, lines 10-34). As such, one would be motivated to choose a carrier substrate having a shrinkage rate approximating the known shrinkage rate of the EP Kerr high modulus rubber backing in order to reduce the amount of waving and curling of the floor mat.

10. Additionally, Applicant traverses the rejections by asserting that Heine does not teach that the preferred basis weight (i.e., 4 oz/yd²) of the nonwoven substrate has a reduced shrinkage

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rate or that the nonwoven substrate is of polyester (Amendment C, page 4, lines 7-11). In response, it is asserted that the references need not contain such a teaching. The fact that Applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Applicant's argument of unexpected results and criticality of selection of nonwoven substrate in the present invention (Amendment C, page 4, lines 12-16) amounts to a mere assertion. In other words, it is not supported by factual, objective evidence. Thus, said argument is unconvincing.

11. Furthermore, Applicant argues that Nagahama, Burke, and Hallworth do not make up for the deficiencies of EP Kerr and Heine (Amendment C, page 4, lines 17-19). The Examiner respectfully disagrees. First, it is noted that the rejection of the independent claims is not over EP Kerr and Heine alone, but rather in conjunction with Nagahama. As such, Nagahama in combination with EP Kerr and Heine clearly renders obvious the presently claimed invention. Burke and Hallworth are only cited to teach a reinforcement strip and silica filler, respectively. As such, they are not intended to be relied upon for selection of a nonwoven substrate having low shrinkage. Therefore, Applicant's arguments are found unpersuasive and the above 103 rejections are maintained.

Conclusion


12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER